[Mr. C. O. Madhavan.]

Now Mr. Tampi's resolution is that the privilege or concession for manufacture of salt should be granted for the sea-bordering taluks. If this be granted there may be taluks where salt water is available from the backwater or the lakes. There will be no justification for denying the privileges to those people who may be able more easily to manufacture salt out of such water than out of the brine from the sea.

MR. M. N. PARAMESVARAN PILLAI: Will the member be pleased to state what is the justification for collecting recoveries from salt?

MR. C. O. MADHAVAN: Recoveries are intented to cover a lot of expenditure involved in the sale of salt. I submit that as a practical proposition the House can never seriously think of this resolution.

MR. K. K. THOMAS: May I know from the member, Sir, where from this salt tax was introduced into Travancore?

MR. C. O. MADHAVAN: Prior to 988 the manufacture of salt was free. The manufacturers shared the product with the Government. It is only after that that restriction was imposed.

MR. K. K. THOMAS: Was it free manufacture?

MR. C. O. MADHAVAN: Yes. It was just like cultivation of paddy. Just like paddy salt also had to be divided between the Government and the producer.

MR. P. PADMANABHAN TAMPI: Considering the assurances of the Excise Commissioner, I beg to withdraw the resolution.

PRESIDENT: Is it the pleasure of the House that the resolution be withdrawn?

The resolution was, by leave, withdrawn.

The Council adjourned for lunch at 1-30 P. M. and reassembled at 2-15 P. M.

FILLING OF PANCHAYAT COURTS JUDGES' POSTS BY ELECTION.

MR. P. PADMANABHAN TAMPI: Sir, I beg to move that "*This Council recommends to the Government that Panchayat Courts should be solely filled by election*".

When I move this resolution, I am not bringing a new matter for legislation. Even when the Panchayat Courts Regulation was under contemplation and the Bill was discussed there was provision for the election of the members of the Panchayat Courts. Section 7 of the Panchayat Courts Regulation says,—"

> "Provided that Our Government may, by Rules made in that behalf, provide for all or any of the Judges bring elected by the people of the village or villages concerned."

The Panchayat Courts Regulation came into force so far back as 1090 and it is now 19 years since this Regulation was passed. Even though 19 years have passed, the right of election of the Panchayat Judges has not been given to the people. I beg to point out to you, Sir, that there are a number of abuses in the matter of nomination. Even in the last

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Council I think Mr. G. Parameswaran Pillai brought this question of election in the Panchayat Courts. There are at present 20 Panchayat Courts in the State. Out of this 19 Panchayat Courts came into existence early enough. In the year 1087 there were 13,197 cases pending.

MR. M. N. PARAMESVARAN PILLAI: May I know whether the practice of election will not make the Judges creatures of the electorate?

MR. P. PADMANABHAN TAMPI: Let me have my say. At page 84 of the Administration Report for the year 1107, it is stated:

> "The total number of suits filed in the Village Panchayat Courts formed 14.15 per cent. of the total original institutions in the State against 15·63 per cent. in the previous year. The average value of a suit was Rs. 18·06 against Rs. 18·52 in the previous year. The largest number of suits filed was in Parur, Trivandrum, Nagercoil, Kottayam, Quilon and Alleppey came next in order. The largest number of suits disposed of was in Trivandrum, Parur, Nagercoil and Kottayam following next in order. The number of suits pending at the end of the year was 1,137, of which 260 were more than six months old and 59, more than one year old, against 249 and 62 cases respectively, in 1108".

From the figures given in the Administration Report we have no reason to think that the number of cases now pending in Panchayat Courts in Travancore is negligible. When Government make nominations, Sir, they call for recommendations from the Dewan Peishkars and the Dewan Peishkars from Tahsildars and the Tahsildars from the Proverthicars and the Proverthicars from the Accountants or peons and the names go to the higher authority. Even though the nominations are recommended by the Dewan Peishkars they are made on the sole responsibility of the Secretariat Officers. We will find during the time of nomination a number of persons from all parts of Travancore crowding at the gates of the Secretariat and the *verandahs* of the Huzur Office. I may point out, Sir, that, though Graduates-in-Law of more than ten years standing are recommended by the Dewan Peishkars, persons who have no status in life are appointed as Judges. The other day when I was pointing out the corruption in the Judicial Department, the Law Member was pointing out certain policies to be followed by the members of the Council to show that the outward appearance is alright. Here, I ask in all earnestness and with all sincerity how matters are being done in the Village Panchayat Courts. Will you believe me, Sir, that in some cases certain Judges take the trouble of taking certain cases to their own houses and do not show the records of the case even to the other Judges of the Court?

MR. KAYALAM PARAMESVARAN PILLAI: May I ask the member whether if the Judges are elected, the complaints will be few?

MR. P. PADMANABHAN TAMPI: It is my view that if election is conducted people will elect the best persons. When the right of election is given to Municipal Councils, the State Council and the Assembly, why not this power be given for the election of the Village Panchayat Court Judges also, when there is provision for it in the Regulation?

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MR. KAYALAM PARAMESVARAN PILLAI: Which should be the electorate that should elect them?

MR. P. PADMANABHAN TAMPI; That is a matter of detail. Government may fix it.

MR. KAYALAM PARAMESVARAN PILLAI: I am merely asking whether the right should be given for the whole citizens of the village?

MR. P. PADMANABHAN TAMPI: Some minimum qualifications may be fixed for the Panchayat Court Judges. In my opinion all the literate people and persons who have some qualification or some status in life may form the electorate.

MR. KAYALAM PARAMESVARAN PILLAI: What is the outward legal jurisdiction of the court?

MR. P. PADMANABHAN TAMPI: Only the people in the locality should have the power to elect a member.

MR. KAYALAM PARAMESVARAN PILLAI: That is to say the election should be made by the inhabitants in the jurisdiction of the local courts?

MR. P. PADMANABHAN TAMPI: Yes.

MR. M. GOVINDAN: May I know whether the idea is that certain persons should stand for election and there is the incidence of their going about canvassing for votes?

MR. P. PADMANABHAN TAMPI: In the case of the Municipality, the Council, the Assembly and even for the Deputy Presidentship there is canvassing of votes. Why not that be allowed in the case of the Village Panchayat Judges also?

MR. KOMILEZHATHU SANKARAN: May I know from the member whether he can assure the House that the elected member will be above personal prejudices?

MR. P. PADMANABHAN TAMPI: He must be. Only best men come out as the result of election.

MR. M. GOVINDAN: May I know whether the member would advocate the Judges of the District Court and High Court also being elected?

MR. P. PADMANABHAN TAMPI: That is a different matter. Here there is clear provision in the Regulation. But there is no provision for the election of the Judges of the High Court, the Dewan, etc.

MR. M. GOVINDAN: Would it be more desirable to make such rectifications in the law?

MR. P. PADMANABHAN TAMPI: When we come to that we will have it.

But this is a small matter. When the Regulation has been working quite satisfactorily and when there are abuses in the nomination of Judges, why not that power be given to the people? I beg to point out that people who cannot even read and write are appointed as

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Judges. I was myself the President of a Village Panchayat Court and there have been persons appointed as Judges who could not read and write.

MR. K. MADHAVAN PILLAI: Did the member report the matter to Government?

MR. P. PADMANABHAN TAMPI: That is not in my province. It is not for the President to report about the inefficiencey of the Judges.

MR. KAYALAM PARAMESVARAN PILLAI: Then whose business is it to report?

MR. P. PADMANABHAN TAMPI: The persons who have nominated them ought to have known the qualifications of those persons.

MR. KAYALAM PARAMESVARAN PILLAI: Are the citizens prejudiced?

MR. P. PADMANABHAN TAMPI: Certainly. If the Judges are unable to write even their own names the people are prejudiced. In British India the system is different. There the Village Munsiffs are nominated from high families. Persons are taken as hereditary. Here it is not so.

MR. KOMILEZHATHU SANKARAN: May I know what the member means by *high families*?

MR. P. PADMANABHAN TAMPI: Families of long standing. Does he not know that there are families of 200 and 300 years' standing?

MR. KOMILEZHATHU SANKARAN: Does he refer to caste?

MR. P. PADMANABHAN TAMPI: No.

MR. KOMILEZHATHU SANKARAN: May I know what are the qualifications of high families?

MR. P. PADMANABHAN TAMPI: There are Nayar families of 200 and 300 years' standing, there are Brahmin families, there are Ezhava families, Christian families and so also in the case of Mahomedans.

MR. M. GOVINDAN: Is not Komilezhathu house itself an example?

MR. P. PADMANABHAN TAMPI: Yes, Komilezhathu house itself has got a standing of 300 years or so. I am not speaking of families of any caste or religion. There are families of long standing which are known to the people of the locality as well as the whole State.

MR. KOMILEZHATHU SANKARAN: May I know whether he fixes any minimum educational qualifications?

MR. P. PADMANABHAN TAMPI: That is my next resolution. We cannot adopt what is being done in British India.

MR. KAYALAM PARAMESVARAN PILLAI: Is there election in British India?

MR. P. PADMANABHAN TAMPI: There is no election. Members are selected more or less from such high families. It is hereditary there. Here it is not done in such a way.

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MR. KAYALAM PARAMESVARAN PILLAI: Will the member object if it is made hereditary here also?

MR. P. PADMANABHAN TAMPI: It cannot be. There are differences between the conditions prevailing here and in British India.

The village system here is different from that in British India. I beg to bring to your notice that the nominations should be given to the High Court Judges. Panchayat Court is not a court owned by Government.

These Panchayat Courts administer only civil justice; and their decisions are subject to revision by the High Court. Why not give the power of nomination to the High Court instead of the Government doing it?

MR. M. N. PARAMESVARAN PILLAI: Does the member think that the abolition of these Panchayat Courts will be better in the interests of the people?

MR. P. PADMANABHAN TAMPI: I do not think so. If proper men are chosen, I think, especially since the money jurisdiction of these courts is small, the people will get better administration of justice from these Panchayat Courts than from the ordinary Courts of law.

MR. KOMILEZHATHU SANKARAN: Has the member any objection to the nomination of these Judges being entrusted to the District Judges within whose territorial jurisdiction these courts are situated?

MR. P. PADMANABHAN TAMPI: If we entrust it to the High Court, naturally they will consult the District Judges. It is very necessary that proper men, men with a sound knowledge of law, are chosen for these Judges' posts, especially in these days when there are very many lawyers and when questions of law are twisted. When suitable lawyers are available, I do not see any justification for men who have no experience of courts of law, men who are even illiterate, being nominated as Judges of the Panchayat Courts.

MR. KAYALAM PARAMESVARAN PILLAI: May I know whether the High Court Judges, or the District Judges are expected to know about the family position and respectability of important men in the different localities where there are Panchayat Courts?

MR. P. PADMANABHAN TAMPI: I think we can expect the High Court to do the choice of Judges of the Panchayat Courts better than the Government.

MR. KAYALAM PARAMESVARAN PILLAI: I am not questioning that at all; but I am asking whether the High Court can be expected to know anything about the respectability or eligibility, for Panchayat Judges' posts, of particular individuals in the various centres in the State?

MR. P. PADMANABHAN TAMPI: They can get all information necessary from the subordinate judiciary in the localities concerned. At any rate, their opinion will be now more sound than that of

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Tahsildars or Proverthicars or Pakuthi Accountants. Sir, the other day, the Law Member said that we should not speak of corruption of our judiciary because we would look low in the eyes of people outside. I challenge the Law Member and request him to ascertain the morality maintained in these Panchayat Courts. For instance, let him enquire into the conditions prevailing in the Padmanabhapuram Village Panchayat Court. There have been specific instances of corruption there. Have not the Government received petitions about one of the Judges, a graduate in law, having been forced to resign his post on account of mal-treatment by the President? Sir, unless the right of choosing those Judges is given to the people of the locality, the best men in the locality are not likely to be chosen; and the morale is bound to be bad.

Under these circumstances, I pray that the people may be allowed the right to elect Judges to the Panchayat Courts. If necessary, I have no objection in the Government reserving a portion of the number of seats for the unreprsented communities.

MR. K. MADHAVAN PILLAI: Does the member suggest that the electorate will not do justice to the depressed classes?

MR. P. PADMANABHAN TAMPI: I am not speaking abou that. My point is that, if in a particular year, no Mahomedan, for instance, has been able to get elected as Judge of the Panchayat Court the Government may nominate a Mahomedan as a Judge. I submit, that is what is done in the case of municipalities.

MR. KATTIYATTU SIVARAMA PANICKAR: Is that suggestion, *viz.*, the Government nominating some of the Judges alone, in keeping with the spirit of the member's resolution?

MR. P. PADMANABHAN TAMPI: That is why I added that, 'if necessary', a portion may be nominated by Government.

MR. K. K. THOMAS: May I ask the member whether, under the Regulation, it is obligatory on the part of the Government to allow the Judges being elected by the people?

MR. P. PADMANABHAN TAMPI: The member can himself read the Section of the Regulation. It only says 'Our Government *may*' and not '*shall*'. If it had been obligatory, there would have been no necessity for me to move this resolution. It is because it is not obligatory that I now recommend it to Government.

MR. M N. PARAMESVARAN PILLAI: Sir, merely to facilitate a discussion on this subject, I second the resolution.

MR. G. NARAYANA AIYAR: Sir, I regret I have to oppose the resolution. The Panchayat Courts are not advisory bodies like legislative bodies. They have judicial functions to perform; they have to administer justice. Therefore, it will be opposed to elementary principles of justice to elect Judges. Further, certain legal qualifications are necessary for Judges. Mere birth in respectful families, or tax-qualifications alone will not be enough for proper discharge of judicial functions. I know that there are complaints about the justice meted out at

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[Mr. G. Narayana Aiyar.]

present in Panchayat Courts. But that can be remedied if qualified men are nominated as Judges of Panchayat Courts. Best men available must be chosen, instead of the recommendations or selections, made by the Proverthicars or other low subordinates of the Revenue Department, being approved as a matter of course in all cases by the Government.

MR. M. GOVINDAN: May I know from the member who selects Judges for the Panchayat Courts?

MR. G. NARAYANA AIYAR: The Proverthicars prepare a list of suitable candidates, and the Tahsildars make the recommendations to Government.

MR. M. GOVINDAN: Is the member aware that it is the Proverthicars that actually make the choice?

MR. G. NARAYANA AIYAR: I only suggest that the task of selection must be entrusted to some responsible officer. In these days when we have so many graduates and graduates-in-law, it is not at all a difficult matter to choose proper men as Judges of the Panchayat Courts.

MR. P. PADMANABHAN TAMPI: May I point out to the member that the lists of suitable men are prepared only by the Proverthicars?

MR. G. NARAYANA AIYAR: There are also instances in which the Tahsildars themselves prepare such lists.

MR. M. N. PARAMESVARAN PILLAI: May I ask whether, in the case of nominations to the Municipal Councils, it is not the Proverthicars that make the recommendations?

MR. G. NARAYANA AIYAR: The municipalities are only advisory bodies. They have no judicial functions to perform.

MR. M. N. PARAMESVARAN PILLAI: Is it the member's idea that only persons who know law should be nominated as Judges of Panchayat Courts?

MR. G. NARAYANA AIYAR: Not necessarily; it will be better, since qualified persons are available in large numbers, if men with legal qualifications are chosen.

MR. P. PADMANABHAN TAMPI: Does not the member think that only persons who know law should be appointed as Presidents of Panchayat Courts?

MR. G. NARAYANA AIYAR: I would very strongly advocate that, not only in the case of Presidents; as far as possible, all the Judges must be qualified men.

MR. P. PADMANABHAN TAMPI: Is the member aware that, in many places, the Presidents, at present, do not know law?

MR. G. NARAYANA AIYAR: May be. I am not sure.

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MR. KATTIYATTU SIVARAMA PANICKAR: May I ask whether law is anything but common sense?

MR. G. NARAYANA AIYAR: Not always. All the same, it is accepted that some people know more of law than others.

MR. M. N. PARAMESVARAN PILLAI: May I ask whether common sense is not uncommon?

MR. KOMILEZHATHU SANKARAN: Does the member think that there will be any necessity, in Panchayat Courts, to consider complicated questions of law?

MR. G. NARAYANA AIYAR: They do arise some times.

MR. KATTIYATTU SIVARAMA PANICKAR: May I point out that common sense is not the monopoly of persons engaged in the legal profession?

MR. G. NARAYANA AIYAR: I never stated that it was the monopoly of a particular set of people.

Knowledge of law must be insisted upon when nominations are made to the Benches of the Panchayat Courts; and the authorities making the selection must not be the Tahsildars, who do not have the time to choose the proper men and who therefore have to depend upon the choice made by their subordinates.

MR. P. PADMANABHAN TAMPI: Does not the member think that, for Travancore conditions, the fifty rupees jurisdiction of the Panchayat Courts is fairly high?

MR. G. NARAYANA AIYAR: I admit it is.

MR. P. PADMANABHAN TAMPI: Is it not a fact that, before the establishment of Panchayat Courts in Travancore, only responsible judicial officers of the State were exercising this jurisdiction?

MR. G. NARAYANA AIYAR: Yes.

MR. M. GOVINDAN: Is it not a fact that more than seventy-five per cent. of suits in Panchayat Courts involve only questions of fact?

MR. G. NARAYANA AIYAR: Though not seventy-five per cent., about fifty per cent. of the cases are only like that.

MR. P. PADMANABHAN TAMPI: Is it not a fact that, even in the High Court, it is not all cases that involve questions of law, and that about fifty per cent. of the cases involve only questions of fact?

MR. G. NARAYANA AIYAR: The majority of cases in the High Court involve questions of law. I am not in a position to give any percentage.

MR. P. PADMANABHAN TAMPI: In the circumstances, what is the member's suggestion to remedy the defects in the nomination of Panchayat Court Judges?

MR. G. NARAYANA AIYAR: The District Judges or the Munsiffs may be asked to nominate in consultation with the Tahsildars.

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MR. P. PADMANABHAN TAMPI: Has the member any objection to the nomination being entrusted to the High Court?

MR. G. NARAYANA AIYAR: Not at all, but it is very doubtful whether the High Court will find time to do it. The Munsiffs and Tahsildars are local officers and can be expected to know the important men in the locality.

MR. M. GOVINDAN: Why not the Tahsildars be asked to prepare the lists in consultation with the Munsiffs?

MR. G. NARAYANA AIYAR: There is no objection to that; only the Munsiffs or Judges also must devote attention to the actual selection.

MR. KOMILEZHATHU SANKARAN: Would the member recommend the constitution of a committee to make nominations to the Panchayat Courts?

MR. G. NARAYANA AIYAR: The greater the number of people who are asked to make the selection, the more difficult will be the task of selection. I am not for appointing any committee.

MR. A. N. VISVANATHA PILLAI: കമ്മറി ഏർപ്പെടുത്തുന്നു എങ്കിൽ അതിൽ അന്യോഗസ്ഥമെമ്പേർസ്ക്കൂടി ഉണ്ടായിരിക്കണമെന്ന് വിചാരിക്കുന്നില്ലെ?

MR. G. NARAYANA AIYAR: അങ്ങനെ വേണമെന്നില്ല. നിയമസംബന്ധമായ പ്രവത്തികം നടത്തുന്നതിന് പരിജ്ഞാനമുള്ളവരായിരിക്കണം കമ്മിറിയിൽ ഉണ്ടായിരിക്കേണ്ടതു്.

MR. A. N. VISVANATHA PILLAI: അന്യോഗസ്ഥന്മാരിലും നിയമപരിജ്ഞാനമുള്ളവർ ഉണ്ടെന്നറിയാമൊ?

MR. G. NARAYANA AIYAR: നിയമ പരിജ്ഞാനമുള്ളവരെ കമ്മിറിയിൽ ഉൾപ്പെടുത്താവുന്നതാണു്. അങ്ങനെ ഇല്ലെങ്കിൽ മുൻസീഫിനേയും മജിസ്ട്രേട്ടിനേയും കമ്മറിയിൽ നിയമിക്കണം. കമ്മിറിയിൽ നിയമിക്കപ്പെടുന്ന ആളുകൾ ആ ജോലിനിവ്വഹിക്കുന്നതിന സമർത്ഥന്മാരാണൊ എന്നു് വിവേചനം ചെയ്തതിനുശേഷം നിയമിക്കണമെന്നേ എനിക്കഭിപ്രായമുള്ളു.

I seriously object to the suggestion of the Judges of the Panchayat Courts being elected.

MR. V. S. ARUMUKHAM PILLAI: Sir, I rise to oppose the resolution. In opposing the resolution I would like to offer the following few remarks. It is unsound and unwise to introduce the principle of election in the matter of constituting Village Panchayat Court Judges. A Panchayat Judge is as much a judicial officer as a District Munsiff or a District Judge of the ordinary Courts of Law

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in the land. It is not sound policy to entrust the work of administration of justice to an individual elected by the parties to whom justice is to be meted out. One cannot be expected to sit in judgment over his own electorate, over persons to whom he owes his position.

An unbiassed and free mind, which are the essential qualities of a person entrusted with the task of administering justice, cannot be expected of a Panchayat Court Judge when he is asked to sit in judgment over his own electorate ; over those persons to whom he owes his very position. The principle of communal representation is generally applied in the matter of selection of Panchayat Court Judges. A person is said to be elected when he is called upon to represent a certain section of the people for certain purposes. My friend Mr. Padmanabhan Tampi cited as example members of the Municipal Councils and the Sri Mulam Assembly. Here, we are sitting as members of this Council representing our electorates in the matter of acquainting Government with their needs and aspirations. We are more or less their representatives, or agents, so to say. To give the Panchayat Court Judges this representative character is really ignoring their functions. Therefore, I strongly oppose the resolution.

MR. KOCHIKAL P. BALAKRISHNAN TAMPI: I also oppose the resolution of Mr. Padmanabhan Tampi. That resolution is an instance of democracy with a vengeance. But, in his speech, he himself indicated his natural bias for the ancient nobility. Sir, these Judicial Offices as my friend Mr. Arumukom Pillai said, should not be subjected to the heat and the excitment of elections. At the same time, I draw the attention of Government to the fact, that something must be done to remedy the present state of affairs. Although I strongly protest against the suggestion of Mr. Padmanabhan Tampi that the judiciary is corrupt, I have to say, as far as Panchayat Court Judges are concerned, although not corrupt, they are thoroughly inefficient. These Judges are all nominated by the Government, possibly with a copy of the census report in front of them. Men of all sorts and conditions are nominated, men who have not elementary education even are appointed. Because of some representative virtue they possess, they are put in as Judicial Officers with results very grotesque and not at all conducive to the efficient discharge of judicial functions.

MR. M. GOVINDAN: May I know from the member, what light a Panchayat Court Judge may derive from the report of the Census Commissioner ?

MR. KOCHIKAL P. BALAKRISHNAN TAMPI: I referred to that only euphemistically to denote communal representation. I have no objection, if people want it, to the selection being made on communal basis. Members of any community may be picked up, provided, they be men who know some law and its procedure. Unfortunately, the law of to-day is not the old law of heroic ages; it has become a very complicated process. Therefore it is better that Government nominate members, as Mr. Narayana

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[Mr. Kochikal P. Balakrishnan Tampi.]

Aiyar suggested, who are versed in law and procedure. Now, that there is no dearth of such qualified men, why should Government go in for people who are sometimes devoid of even common sense? Government should at least insist on the knowledge of law as one of the qualifications for nomination of a Panchayat Court Judge. At least, the Presidents of Panchayat Courts should not be appointed from classes of men who are quite innocent of law. Therefore I suggest that——

MR. KAYALAM PARAMESVARAN PILLAI: Will not too much of law and lawyers prove a disadvantage in the working of the Panchayat Courts?

MR. KOCHIKAL P. BALAKRISHNAN TAMPI: If that is so, it would provoke the report that even the High Court Bench will have to be reconstituted according to the suggestion of the Law Member, and that it would prove an advantage to the State. I oppose the resolution.

MR. G. PARAMESVARAN PILLAI: The only question before the House is whether the judgeship of the Panchayat Courts should be filled soley by election. I may state for the information of the House that the question relating to the nomination of judges to Panchayat Courts was considered at length by the Law's Delays Commissioner in connection with the law's delays enquiry. In the course of the investigation, I had the privilege to hear the evidence of several leading men on the subject and public opinion was almost entirely against the introduction of the elective system. The Law's Delays Commissioner has recorded thus in his report:

> "The suggestion that the elective system might be put in force in the appointment of the Village Panchayat Court Judges was made so far back as in 1095, at the Sixteenth Session of the Sri Mulam Popular Assembly; but it was turned down by the Government on the advice of the High Court who considered that the time was not ripe for such a step. The subject was mooted again at the Twenty-fifth Session of the Sri Mulam Popular Assembly; but it apparently passed unnoticed, for it failed to elicit a reply. Among those who have sent in anwers to the questionnaire, are a few who pin their faith to the elective system but their voices are drowned in the chorus of condemnation with which the spirit displayed in the discharge of their duties even by the present judges, is assailed. The protagonist of the elective system may no doubt believe and maintain that election is a panacea for these as well as other evils, but unless we have very sure guarantees that the remedy would not be worse than the disease, the experiment is too risky to be attempted. As matters stand, it cannot be said that the introduction of the elective system is a practical proposition; and it may be well to realise that the longer the present state of things continues, the consummation of the wish of the election enthusiast would be receding further into the distance."

This is more or less the general feeling reflected on the floor of the House during this debate.

MR. M. N. PARAMESVARAN PILLAI: Does the member know that the practice of appointing practising Vakils as Judges is open to objection for the simple reason that they have to prostitute their position as Judges to build up their practice?

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MR. G. PARAMESVARAN PILLAI: That is beside the point. The subject matter of the resolution relates only to the procedure to be adopted in the matter of nominations, whether it should be by election or otherwise. So far as that is concerned, I have told the House, what the public opinion is on the point.

MR. K. K. THOMAS: I am sorry, I have to differ from my friend Mr. Padmanabhan Tampi in his suggestion that the Panchayat Court Judges should be filled by election. His main argument to start such a discussion was that there is a provision in the Regulation which says that the Judges of the Panchayat Courts *may* be elected. Probably, he is labouring under a misapprehension that there is an obligatory provision in the Regulation, but it only permits election of Judges. To a question of mine, Mr. Tampi agreed that it was only a permissive provision found in the Regulation. Of course, that does not insist on election. My own experience of the Panchayat Courts' Judges is that some of them are a hard-working lot who realise and discharge their responsibility to the entire public satisfaction. There may be instances, where a few of them discharge their function according to their convenience. We have not been able to get the very best and efficient among the citizens. In fact, most of the persons who fill the places of Presidents are reliable and efficient men and they do their work efficiently.

MR. M. N. PARAMESVARAN PILLAI: Is the member aware that there are persons who do not know to read and write among the Panchayat Court Judges?

MR. K. K. THOMAS: No. I do not agree with the member there. All of them, I am sure, will be men who can read and write well. After all, what is the sort of capacity that is required of a Panchayat Judge. I do not think he must be conversant with technical law. That is not expected of them. We want a number of men who will be able to understand common things and decide on facts. Common sense and character are the two essentials required in a Panchayat Court Judge. In the present day, when we have educated men, it is reasonable and permissible to say that almost all these places should be filled by lawyers. The difficulty which obtained in previous years was to find out really qualified men in law who could accept Panchayat Judge's posts. Now, it is all changed. Qualified persons in law are found in abundance. It may be true that the Peishkars will have to consult the Tahsildars who in turn consult the Proverthicars. But they simply give a number of names, from which the Dewan Peishkar selects only a few. The Secretariat makes the real and final selection and the best men are picked up. That is to say, the selection in fact does not rest either with the Proverthicar or the Accountant or the Taluk Cutcherry. It rests mainly with Government.

MR. KOMILEZHATHU SANKARAN: May I know if there is not a practice in Travancore to nominate a member of the municipality as a Judge of the Panchayat Court?

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MR. K. K. THOMAS: I am not sure. There is no practice.

MR. KOMILEZHATHU SANKARAN: In the Mavelikara Municipality, for instance, is there not a Municipal Councillor who is appointed as a Judge of the Panchayat Court as well?

MR. K. K. THOMAS: There are members of the municipality appointed as Judges.

MR. KOMILEZHATHU SANKARAN: Is it not a fact that municipal cases are pending disposal for a long time in Bench Magistrate's Courts?

MR. K. K. THOMAS: I am not aware.

MR. KOMILEZHATHU SANKARAN: I will make the question clear. Suppose there is a case charged by the municipality. Is it not possible that a representative of the municipality has to adjudicate upon that case?

MR. K. K. THOMAS: That is also necessary.

MR. P. PADMANABHAN TAMPI: Will there be any charge in the Panchayat Court by the municipality?

MR. K. K. THOMAS: Yes. Criminal cases are charged before the Bench Magistrate.

MR. P. PADMANABHAN TAMPI: Will there be any charge from the Panchayat Court to the municipality?

MR. K. K. THOMAS: No.

MR. M. GOVINDAN: May I know whether it would not be desirable to ask the Tahsildar to consult a District Munsiff and perhaps members of this Council or Sri Mulam Assembly or both?

MR. K. K. THOMAS: It will be good if Munsiffs are consulted in the matter of selection.

MR. M. GOVINDAN: What about consulting the members?

MR. K. K. THOMAS: I do not think it necessary that we should be consulted.

MR. KOMILEZHATHU SANKARAN: Is the member aware that in certain places members of the Bench Magistrate's Courts are Judges of the Panchayat Court as well?

MR. K. K. THOMAS: May be.

MR. KOMILEZHATHU SANKARAN: Is it not a fact that Municipal Councillors are appointed as Bench Magistrates?

MR. K. K. THOMAS: I am not aware. Sir, in America.....

MR. M. N. PARAMESVARAN PILLAI: Will not most of these evils be mitigated if appeals are provided against the decisions of Bench Magistrate's Courts?

MR. K. K. THOMAS: No. Now there is a revision for cases over Rs. 50 or so.

MR. M. N. PARAMESVARAN PILLAI: In such cases of revision, does the member know that the Judges do not go into the questions of fact but only questions of law?

MR. K. K. THOMAS: It is necessary for the protection of the poor litigant that there should be no appeal. I know very well tha-

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Panchayat Court Judges have capacity enough to go into questions of fact and also common sense law.

MR. M. N. PARAMESVARAN PILLAI: So, may I know, does the member advocate that the rich and the poor are to be treated alike in the matter of administration of justice?

MR. K. K. THOMAS: That does not arise.

MR. M. N. PARAMESVARAN PILLAI: Does the member know, that an appeal shall lie in the case of suits above Rs. 50 and no appeal for small suits?

MR. K. K. THOMAS: Anyway, the suit will cost much more than the matter in litigation.

MR. M. N. PARAMESVARAN PILLAI: Does the member think that Rs. 50 affair is not a matter of much concern to the poor litigant?

MR. K. K. THOMAS: In fact, the expense is the point, we have to consider, to protect the litigants.

In America where an elective system is followed, I understand from the newspapers that, that system is found to work great hardship. Thereby, the administration of justice will be in the hands of one party, a concern who will run the whole show for years and years together and the poor man will be left without any remedy or protection from the influences of the concern who runs the whole administration.

When the party is once in power, they keep themselves in power, and not even the gravest offences can be investigated or the offenders punished. That being the case, I think it will be very bad and very dangerous to allow election for Panchayat Judges and Magistrates.

PRESIDENT: Does anybody else wish to speak?

MR. K. GEORGE: Sir, all the speakers who followed Mr. Padmanabhan Tampi have spoken against this resolution and have elaborated arguments to show that if the resolution is carried and accepted by Government it would be disastrous to the cause of justice. Therefore it does not seem to be very necessary for me to reiterate the arguments already placed before this House.

MR. M. N. PARAMESVARAN PILLAI: May I know wherefrom the provision for election has been copied in the Regulation?

MR. K. GEORGE: I think it is original. When that Regulation was promulgated, perhaps there was an idea that in course of time we would be able to allow the election of Judges to Panchayat Courts. But I think, as members on the other side have very well put it, the system of election is hardly suited to the administration of justice. I agree with the member who pointed out that we have enough fields for comment and discord and that it is very undesirable that we should introduce a further element of discord by bringing the elective system into the courts. I do not wish to stress that point. What I say is that it is not at all in the interests of justice to adopt the elective system. Administration of justice is not a matter in which we can allow party passion to play. Suppose we allow election in the case of Panchaya

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[Mr. K. George,]

Judges. It obviously follows that candidates will put themselves forward for election as Judges and will canvass votes. The result is that they will be refused themselves as elected to represent a particular party.

MR. M. N. PARAMESVARAN PILLAI: Cannot that evil be mitigated by transferring such Judges to other courts and the Judges from other places being transferred to these courts?

MR. K. GEORGE: Then the question is who elects whom. Apparently the idea is that the Judge who is elected will represent some party.

MR. G. PARAMESVARAN PILLAI: Are they not elected to some particular court?

MR. K. GEORGE: Yes, they are elected to some particular court and they cannot be tossed about from place to place. The elected candidates will be sent up by the voters and they will have to carry out the wishes of their electorate and so it will be quite impossible for an elected Judge to do justice to all the parties that come before his court.

MR. M. N. PARAMESVARAN PILLAI: There is a lot of complaint that Judges selected from among merchants are favouring merchant litigants.

MR. K. GEORGE: I have not heard of that.

I shall refer lately to the question of nomination although it does not strictly arise in the discussion of this resolution. This question of ability of Panchayat Judges was referred by the Government to the various Dewan Peishkars, and all of them, without exception, have stated that it would be the most tragic thing if Government were to introduce the elective system with the filling up of Panchayat Judgeships. Some time ago an interpellation was asked in the Legislative Council on the same subject and the matter was referred to the High Court. The High Court also was definitely of opinion that it would be disastrous to introduce election to Panchayat Courts. So, on the whole the concensus of opinion, both in the House and outside, is that election is very unsatisfactory. What the Government do at present is to nominate the Judges themselves. It has been stated by Mr. Padmanabhan Tampi and Mr. Narayana Aiyar that the candidates' names are sent up by the Peishkars on the recommendation of the Tahsildar who gets his recommendation from the Proverthikar. That is not the case. I do not know how far the Proverthikar enters into the business at all. It is true that the Tahsildars send up a list of names, I think half a dozen, for each vacancy. From that list the Peishkar selects two or three names and sends his list to Government. Some time ago when the same complaint was made in the old Sri Mulam Popular Assembly, Government issued strict instructions to the Peishkars to the effect that the persons that they recommend must be persons of status, ability and integrity, and that they must satisfy themselves personally that the person they recommend satisfies these conditions. It may be that

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here and there, occasionally there may be one or two cases where the nominations have not been satisfactory. But, on that ground, to condemn the whole body of Panchayat Court Judges, and to say that these courts contain a large body of inefficient people lacking in integrity, is going too far. I have got a list of Panchayat Judges of various courts and I find that on the whole either a graduate-in-law or a pleader is the President or the senior judge.

MR. P. PADMANABHAN TAMPI: Is the President of the Padmanabhapuram Panchayat Court a graduate-in-law or a pleader?

MR. K. GEORGE: No. That is one of the few exceptions. But I find that the senior Judge there is a Munsiff's Court Vakil.

So the Government take care to see that in each court there a sufficient number of Judges acquainted with law.

MR. K. MADHAVAN PILLAI: Is that President a particularly unfit man?

MR. K. GEORGE: I cannot say. He was a member of the old Legislative Council.

MR. M. N. PARAMESVARAN PILLAI: What was the intention of the Legislature in providing this clause for election? When did they desire to give effect to that clause?

MR. K. GEORGE: It is only a permissive clause. If Government think that the system of election could be introduced, then that clause permits it.

MR. M. N. PARAMESVARAN PILLAI: May I ask the member whether the Council thought that election can be adopted when they provided this clause?

MR. K. GEORGE: They were only introducing the law for the first time and they made the provision permitting the Government to introduce the system of election.

MR. M. GOVINDAN: Is there any Judge who does not know even to write his own name or who is illiterate?

MR. K. GEORGE: I do not think there is anybody like that.

As a matter of fact, as I said, the Dewan Peishkar has to assure himself that the person he recommends is suitable to do work as a Panchayat Court Judge. I do not think any Peishkar will recommend a man who does not know to read and write.

MR. M. N. PARAMESVARAN PILLAI. Are there Judges who do not know English?

MR. K. GEORGE: There may be. But I do not think English is a necessary qualification for them.

MR. M. N. PARAMESVARAN PILLAI: Does the member know that when the judgments are written in English they merely sign those judgments without being able to read them?

MR. K. GEORGE: I do not think they sign like that. If it is said that only people who know English can administer justice in this country, then, I should say that very useful citizens, public-spirited citizens, citizens with quite sufficient knowledge of the cases that come before them, will have to loose all chances of serving the State in this capacity.

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MR. P. PADMANABHAN TAMPI: Is the member aware that knowledge of the Civil Procedure Code is necessary for administration of justice in the Panchayat Courts?

MR. K. GEORGE: I do not fully agree. A knowledge of law is necessary to some extent. For that we provide a sufficient number of vakils in every court. When any case is posted before a particular bench, they can arrange to have at least one lawyer on that bench.

MR. M. N. PARAMESVARAN PILLAI: Do Government follow the principle of communal representation in the appointment of judges?

MR. K. GEORGE: It is not exactly communal representation. Government find that every community possesses persons who are capable of doing public service in this matter. Government see that in nominating persons minority communities are also represented in the Panchayat Courts. Firstly, there are public-spirited men who are capable of doing public work in various communities. Secondly, a sprinkling of various communities in the courts is desirable in the interest of the courts.

Sir, I have nothing more to say. I have explained in full how the system of election is quite unsuited for this purpose.

MR. P. PADMANABHAN TAMPI: Is the member of opinion that the best men will be selected for the Panchayat Courts if the right of nomination be given to the local judicial officers as well as the executive officers?

MR. K. GEORGE: I would rather entrust the matter to the Government than to the local officers.

MR. P. PADMANABHAN TAMPI: I am speaking of the suggestion that Government may nominate on the recommendation of the local officers.

MR. K. GEORGE: The only objection to that is that the nomination has to be done as quickly as possible. A judge has to be nominated without much delay after the vacancy has occurred. If you go on consulting various people, consulting committees and Munsiffs, a lot of correspondence will arise. That means delay. Apart from that, I do not think there is any serious objection to consulting Munsiffs. But Munsiffs only know the persons who practise before them.

MR. P. PADMANABHAN TAMPI: Is the member of opinion that at least the best men, or one or two lawyers in the local bar, may be nominated as Judges?

MR. K. GEORGE: That may be done. But my experience is that some members of the bar refuse to serve as Judges.

MR. P. PADMANABHAN TAMPI: Is it on account of the fact that useless people are put over them as Presidents?

MR. K. GEORGE: Not at all. It is because some of the prominent lawyers have heavy work in their courts and they cannot spare the time. Apart from that, I do not see any objection in consulting

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District Munsiffs. But that would apply only in the case of vakils practising before them.

MR. K. MADHAVAN PILLAI: Would the policy of going into the character and antecedents of people who live within the jurisdiction of the Munsiffs be healthy?

MR. K. GEORGE: It may perhaps indicate that that Munsiff is partial to a particular vakil.

MR. P. PADMANABHAN TAMPI: Is the member aware that persons who are forgers and perjurors are appointed as Panchayat Court Judges?

MR. K. GEORGE: I do not know. It is a serious charge to make.

29. MR. M. N. PARAMESVARAN PILLAI: Is it not bad to nominate the same person as judges on more than one occasion?

MR. K. GEORGE: I do not see any objection to it. If a Judge does good work and if he is again recommended for selection by the Dewan Peishkar, a second chance is given. If a man is doing good work generally, he is given two or at most three turns. It is not usual to have more than two turns.

MR. P. PADMANABHAN TAMPI: Sir, in bringing this resolution before the House I wanted to bring to the notice of the Government the abuses that are prevalent in the nomination of Judges and working of the Panchayat Courts. From the assurances that I get from the other side of the House that in due consultation with the Judicial Officers best men will be nominated as Judges hereafter, I have to say that I am not pressing the resolution. This question, Sir, was brought some time past during Mr. Watts's period and he promised that he will send his own men and inquire about the persons to be nominated as Panchayat Court Judges and only after that they will be appointed. My object is only to see that best men who are above suspicion are appointed as Judges of the Village Panchayat Courts. In view of the facts expressed by the other members of this House and the other side of the House I do not press this resolution.

PRESIDENT: The member has asked permission to withdraw the resolution. But I have not heard the assurances given by the official members.

MR. KAYALAM PARAMESVARAN PILLAI: The question is a very important one and we must know the view of the House.

PRESIDENT: The withdrawal is opposed. The resolution before the House is—

"*This council recommends to the Government that Panchayat Courts should be solely filled by election*".

Those who favour the resolution?

MR. M. N. PARAMESVARAN PILLAI: Is the withdrawal of the motion put to vote?

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PRESIDENT: I am putting the resolution to the vote.

MR. M. N. PARAMESVARAN PILLAI: Suppose this House is prepared to give permission to withdraw the resolution. Where is the necessity for putting to the vote the original proposition?

PRESIDENT: Any member can oppose when a member asks permission to withdraw a resolution. If any member opposes the withdrawal, that must be taken into account and the motion put to the House. Those who favour the resolution?

MR. P. PADMANABHAN TAMPI: Is it the rule that when a resolution is not allowed to be withdrawn the Chair should put it to the vote?

PRESIDENT: Yes. That is the rule.

The resolution was put to the vote and lost, none voting for the same.

MR. KAYALAM PARAMESVARAN PILLAI: Will it be recorded that there was nobody for the resolution?

PRESIDENT: Yes.

FIXING OF MINIMUM QUALIFICATIONS FOR JUDGES OF PANCHAYAT COURTS AND BENCH MAGISTRATES.

MR. P. PADMANABHAN TAMPI: I beg to move the following resolution:—

"This Council recommends to the Government that a minimum qualification be prescribed for eligibility for the nomination of Panchayat Judges and Bench Magistrates".

In moving this resolution, Sir, I may inform the House that I am putting the other aspects of the question of nomination of the Panchayat Judges and Bench Magistrates. At present there is absolutely no qualification fixed for the appointment of Judges in Panchayat Courts. Even for the Municipal Councils and for the Assembly some minimum qualification has been fixed. I have been speaking, Sir, that I know certain cases where literacy was not considered necessary for the appointment of Panchayat Court Judges.

MR. S. PIRAVIPERUMAL PILLAI: May I know from the member whether there is a qualification prescribed for the Dewan of Travancore?

MR. P. PADMANABHAN TAMPI: That question does not arise here.

MR. KAYALAM PARAMESVARAN PILLAI: Is the member aware that qualifications are prescribed for High Court Judges?

MR. P. PADMANABHAN TAMPI: I think qualifications are fixed. Without going to the qualifications of High Court Judges and the Dewan of Travancore, why not we go to the qualifications of District Munsiffs and Magistrates? When there are qualifications fixed for Munsiffs, Tahsildars and Magistsates, I think that for persons working in the lower ranks of the judiciary minimum qualifications may be

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